

Evaluation Acceptance and Non-Disclosure Agreement

THIS AGREEMENT, made this _____ day of _____, 20____, is between _____, hereinafter referred to as Sponsor, _____, hereinafter referred to as CCTL, and the National Information Assurance Partnership Common Criteria Evaluation and Validation Scheme, hereinafter referred to as CCEVS.

WHEREAS, the Sponsor, CCTL, and CCEVS desire to enter into evaluation and discussions concerning a product described as _____ submitted to CCEVS. To enable the CCEVS to conduct the necessary government oversight of the evaluation of the product by the CCTL, it may be necessary for the CCTL and/or Sponsor to disclose to the CCEVS certain information that is proprietary to the Sponsor and/or CCTL ("Proprietary Information").

NOW THEREFORE, to protect such Proprietary Information the Sponsor, CCTL, and CCEVS agree as follows:

1. Proprietary Information may include, without limitation, trade secrets, business plans, financial data, technical data, and other items pertaining to the above proposed product as be necessary or desirable to conduct the evaluation.
2. To be protected hereunder, all Proprietary Information provided to the CCEVS must be clearly identified and properly marked by the Sponsor and/or CCTL so that such information can be protected by the CCEVS to the full extent authorized by law.
3. To the extent permitted by law, all Proprietary Information provided under this Agreement will be held in strict confidence and only used as necessary to perform the evaluation and evaluation oversight. If required, the CCEVS will actively solicit the Sponsor's and CCTL's assistance in establishing supportable bases for protecting such Proprietary Information in response to Freedom of Information Act requests. CCEVS will not transfer or assign any Proprietary Information outside of CCEVS without prior written consent of the Sponsor and/or CCTL as appropriate.
4. No grant, ownership, license, or right other than as specified herein, is transferred hereby. No modification of any kind of the Source Code or any other Proprietary Information is permitted under this Agreement without the prior written permission of the Sponsor. Specifically, CCEVS agrees not to alter, remove, or otherwise disturb any notices of Intellectual or proprietary rights, including without limitation copyright. The Sponsor and/or CCTL is specifically not responsible for use of any Sponsor or CCTL Proprietary

Information for other than an evaluation. Except as necessary to conduct an evaluation, reverse engineering, decompilation and other source code derivations of any object code is specifically prohibited.

5. CCEVS shall not be liable for any unauthorized disclosure or use of Proprietary Information if it:
 - (a) is presently known or hereafter becomes known to the public by other than breach of the CCEVS' obligations hereunder, or
 - (b) is known to the CCEVS without restriction prior to the time disclosure of it by the Sponsor or CCTL, or
 - (c) is subsequently and independently developed by the CCEVS without resort to the Sponsor's or CCTL's disclosure, or
 - (d) is independently and rightfully acquired by the CCEVS from another source without restriction on disclosure or use, or
 - (e) is identified by the Sponsor or CCTL to be no longer subject to this Agreement.
6. The receipt of this information by the CCEVS for the purpose of performing government oversight of the evaluation shall not be construed in any way as a commitment to the Sponsor or CCTL for any future procurement of any equipment or other items of supply or service sold by the Sponsor or CCTL nor in any way be permitted to provide a basis or argument for sole source procurement that might otherwise prevent free and full competition.
7. It is mutually understood and agreed that the evaluation oversight will be conducted by validators for the CCEVS. It is further understood and agreed that the CCEVS's validators may include authorized agents who are under contract with the CCEVS and who are bound to abide by all terms, conditions, and references of this Agreement.
8. Any report or other information provided by the CCEVS to the Sponsor and/or CCTL arising out of or as a result of this Agreement or the evaluation is not to be construed as an endorsement of the Sponsor's or CCTL's goods and/or services and the Sponsor and/or CCTL will not, by advertising or otherwise, claim or imply the existence of a CCEVS endorsement of its goods and/or services covered by this Agreement.
9. This Agreement shall be governed by, and construed in accordance with, federal statutes and regulations, notwithstanding any State conflict of law statutes, practices or rules of construction. To the extent that no federal law applies, the law of the State of _____ shall apply without giving effect to its conflict of law provisions.

10. This Agreement shall be effective from the date which first appears in this Agreement until terminated in writing by either party with or without cause. The CCEVS's obligation to protect Proprietary Information shall continue for a period of five (5) years following disclosure of such information to the CCEVS. Within ten (10) days of termination of this Agreement, CCEVS shall return all originals of the Source Code and any other Proprietary Information of the Sponsor or CCTL which has been fixed in any tangible means of expression, and any copies thereof. It is further understood and agreed that for security reasons CCEVS will not return to the Sponsor or CCTL any software or magnetic media which has been installed on a CCEVS system and the CCEVS will destroy said software upon completion of the Agreement. Any documentation provided with the software will be returned to the Sponsor or CCTL upon termination as appropriate.
11. Neither failure to require performance, nor waiver of a breach, of any provision of this Agreement constitutes any waiver of a party's right to subsequently require full performance of that provision.
12. No promise of payment is made herein and this Agreement constitutes the total obligation of the parties. This Agreement is the complete and exclusive statement of the parties on these specific subjects, and supersedes all prior written or oral agreements, proposals, and understandings relating thereto.
13. This Agreement may only be modified by a writing signed by an officer of the party to be bound. If any court of competent jurisdiction determines that any provision of this Agreement is invalid, the remainder of the Agreement will continue in full force and effect, and the invalid provision shall be restated to most nearly give effect to its stated intent.

National Information Assurance Partnership
Common Criteria Evaluation and Validation Scheme
100 Bureau Drive, Stop 8930
Gaithersburg, MD 20899-8930

BY: _____
TITLE: _____
DATE: _____

SPONSOR'S NAME	CCTL'S NAME
Address	Address
City, State	City, State

BY: _____	BY: _____
TITLE: _____	TITLE: _____
DATE: _____	DATE: _____

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CCEVS F8003, ver 1 (11/20/01)

Mail to: NIAP CCEVS, 100 Bureau Dr., STOP 893
Gaithersburg, MD 20899-8930
OR fax to: 301-948-0279 ATTN: NIAP CCEVS